

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

In the Matter of
Curtis Devine
Paradise Wellness Center, Inc.
San Bernardino County,
WDID No. 7_36CC40159

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO R7-2020-0023

The Administrative Civil Liability Complaint (Complaint) is issued to Curtis Devine and Paradise Wellness Center, Inc., (collectively “Discharger”) by the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin (Regional Water Board) pursuant to California Water Code (Water Code) section 13350, which authorizes the imposition of administrative civil liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer’s authority to a deputy, in this case, the Assistant Executive Officer. The Discharger is alleged to have violated conditions of the State Water Resources Control Board’s (State Water Board) General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities, Order No. WQ 2017-0023-0001-DWQ¹ (General Order), as amended by Order No. WQ 2019-0001-DWQ.

THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD
ALLEGES THE FOLLOWING:

BACKGROUND

1. The Discharger owns and operates an indoor cannabis cultivation facility on San Bernardino County Assessor Parcel Number (APN) 0650-391-23, located at 1 Ice House Road in Needles, California (Site). Curtis Devine operates Paradise Wellness Center, Inc. The Site is owned by Curtis Devine/Ice House Rd, LLC.² An onsite wastewater treatment system (OWTS) for domestic waste disposal exists on the Site.
2. The Site is located within the Homer Hydrologic Unit. The Regional Water Board’s Water Quality Control Plan for the Colorado River Basin Region (Basin Plan), last

¹ Available at: General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities

² Curtis Devine listed himself as property owner on the enrollment application. Property records indicate that Ice House Rd LLC currently owns the property. Curtis Devine is the sole manager/member for Ice House Rd LLC listed on the 2020 corporate filing on file with the California Secretary of State.

amended in 2019, designates beneficial uses for groundwater in the Homer Hydrologic Unit as Municipal and Domestic Supply (MUN), Industrial Service Supply (IND), and Agricultural Supply (AGR).

3. The State Water Board first adopted the General Order (Order No. WQ-2017-0023-DWQ) on October 17, 2017, which went into effect following approval by the Office of Administrative Law (OAL) on December 18, 2017.
4. The General Order regulates discharges of waste associated with cannabis cultivation activities and implements the requirements set forth in the State Water Board's Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy).
5. The Cannabis Policy establishes principles and guidelines for the diversion and use of water, land disturbances and other activities related to cannabis cultivation in order to protect water quantity and water quality. The State Water Board adopted these requirements in consultation with the California Department of Fish and Wildlife pursuant to Water Code section 13149. The State Board first adopted the Policy on October 17, 2017, through Resolution No. 2017-0063. The Policy went into effect following OAL approval on December 18, 2017.
6. The General Order provides conditional exemptions for certain cultivation activities. Commercial cannabis cultivation activities that occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g. concrete or asphalt paved), provided that they comply with the Cannabis Policy and either:
 - a. Discharge all industrial wastewaters generated to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater; or
 - b. Collect all industrial wastewater in an appropriate storage container to be stored and properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.
7. Conditionally exempt dischargers are required to obtain coverage under the General Order's Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Conditional Waiver).
8. Dischargers covered under the Conditional Waiver must comply with the conditions contained in the General Order. Order Paragraph A of the General Order (page 23) requires the Discharger to comply with all requirements described in Attachment A of the Cannabis Policy. The 2017 General Order contained the same language at Order Paragraph A.1, on page 17. Attachment A of the Cannabis Policy is included as Attachment A to the General Order.

9. The Discharger applied to enroll the indoor cultivation facility on the Site under the General Order's Conditional Waiver on April 9, 2018. The application indicated that wastewater from the indoor cannabis cultivation activities would be to an onsite wastewater treatment system (such as a septic tank and leach field), to land, or to surface water.
10. While processing the Discharger's application, Regional Water Board staff emailed Curtis Devine, on April 25, 2018, to clarify the requirements for discharging cannabis cultivation wastewater. Water Board staff stated that the plan to discharge to an onsite wastewater treatment system may require additional permits. Regional Water Board staff called Curtis Devine on April 26, 2018, to explain the prohibition of wastewater discharge to an onsite wastewater treatment system and requested a schematic and brief summary of the closed loop reverse osmosis (RO) system that was discussed.
11. A consultant working on behalf of the Discharger replied by email on May 3, 2018, providing site plans and explaining that the cultivation facility is a closed loop such that wastewater produced by the indoor cultivation activities would not reach the onsite wastewater treatment system. Instead, waste from the RO system (which removes salts and other minerals from municipal water prior to use for cultivation, producing one gallon of wastewater for every two gallons of treated water), nutrient runoff from the cultivation, and condensate from the onsite HVAC and dehumidifier systems would be collected into a reclaim tank, from which it would be processed back through the RO system for treatment and cultivation use. The septic tank would receive water only from the onsite restrooms and a janitor sink.
12. On May 8, 2018, the Regional Water Board issued a Notice of Applicability confirming enrollment under the Conditional Waiver and the applicability of the General Order and Cannabis Policy to the cultivation activities. A revised Notice of Applicability was issued May 22 correcting the discharge method from sewer to containment in a sealed tank with final waste products hauled offsite.
13. On February 5, 2019, the State Water Board adopted Order No. WQ-2019-0001-DWQ, amending the General Order, and Resolution No. 2019-0007, amending the Policy. Both became effective on April 16, 2019, following approval by the Office of Administrative Law. The 2019 amendments did not alter the requirements applicable to the Discharger in any way material to the issues set forth in this Complaint. The Discharger remains enrolled under the General Order's Conditional Waiver.
14. On June 25, 2019, starting at approximately 7:00 am, Regional Water Board staff inspected the Site. The Discharger's representative was present for the inspection. Irrigation source water is provided by the City of Needles and is pretreated on site by a reverse osmosis system. This treatment process produces one gallon of wastewater for every two gallons of treated water.

15. During the inspection, Regional Water Board staff observed wastewater from the RO system being discharged directly to the onsite wastewater treatment system. The Discharger's representative confirmed that the wastewater had originally discharged to a 5000-gallon reclaim tank to be reused onsite, as outlined in the consultant's May 3, 2018, email. But the representative stated that the plumbing for the wastewater had "recently" been rerouted to discharge to the septic tank because the reclaim tank was filling up too fast. He stated the plumbing was redirected a few weeks prior to the June 25, 2019 inspection. While the representative would not give an exact date, Regional Water Board staff understands from common usage that "a few weeks" means more than two weeks. Therefore, the Prosecution Team conservatively estimates that "a few weeks" means the discharge into the onsite wastewater treatment system occurred for at least 21 days prior to the inspection.
16. Regional Water Board staff emailed the Discharger's representative and the Discharger on June 25, 2019, immediately following the inspection, notifying them that the discharge of wastewater to the septic system was a violation of Conditional Waiver requirements in the General Order and requested that the discharge cease.
17. The Discharger's representative replied the same day and stated the reverse osmosis treatment units had been turned off, and the issue would be resolved the following day.
18. On June 26, 2019, the Discharger's representative submitted photographs confirming the plumbing to the septic tank had been closed off and sealed and rerouted to the reclaim tank via a floor drain. Site plans previously provided by the consultant, provided again by the representative during the site inspection, show that the floor drains discharge to the reclaim tank.
19. On September 19, 2019, Regional Water Board staff issued a Notice of Violation to the Discharger for the unauthorized discharge of wastewater from the RO system to the onsite wastewater treatment system.
20. On September 30, 2019, the Regional Water Board received a letter from the Discharger responding to the Notice of Violation. The letter documented the steps taken to prevent recurrence of the alleged violation, including diverting the wastewater to the reclaim tank, adding an aerator to help sediment settle in the tank, adding a large pump to send the reclaimed water through a high total dissolved solids reverse osmosis system to be reused, checking sediment levels daily, and posting a memo to management and the construction team staff noting the reclaim wastewater system is in compliance and no changes are to be made. The letter also stated that the RO system produces approximately 400 gallons of wastewater per day.

LEGAL AND REGULATORY CONSIDERATIONS

Water Code

21. Pursuant to Water Code section 13350, subdivision (a), any person who in violation of a waste discharge requirement, waiver condition, or other order or prohibition discharges waste or causes or permits waste to be deposited where it is discharged into waters of the State is subject to civil liability. Pursuant to Water Code section 13350, subdivision (e), civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs, or an amount not to exceed ten dollars (\$10) per gallon discharged, but not both.
22. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

Basin Plan

23. Pursuant to the authority of Water Code Section 13243, Chapter 3 of the Basin Plan establishes enforceable Waste Discharge Prohibitions that apply to the Colorado River Basin Region. The Basin Plan is available at: [Colorado River Region Basin Plan](#).
24. Chapter 3, IV.D of the Basin Plan states that discharge of mineralized wastes to disposal facilities (onsite wastewater treatment systems) is prohibited. "Discharges of water softener regeneration brines, other mineralized wastes, and toxic wastes to disposal facilities which ultimately discharge in areas where such wastes can percolate to ground waters usable for domestic and municipal purposes are prohibited."

Cannabis Policy

25. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 12:

The cannabis cultivator shall comply with all applicable requirements of the State Water Board and Regional Water Board' (collectively Water Boards) water quality control plans and policies.

26. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 26, provides that:

Except as allowed and authorized in this Policy, cannabis cultivators shall not discharge:

- *Irrigation runoff, tailwater, sediment, plant waste, or chemicals to surface water or via surface runoff;*

- *Waste classified as hazardous (California Code of Regulations, titl 23, section 2521(a)) or defined as designated waste (Water Code section 13173); or*
- *Waste in violation of, or in a manner inconsistent with, the appropriate Water Quality Control Plan(s).*

27. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 27, provides that:

Unless authorized by separate waste discharge requirements, the Cannabis Cultivation General Order, or a CWA section 404/401 permit, the following discharges are prohibited:

- *Any waste that could affect the quality of waters of the state; or*
- *Wastewater from cannabis manufacturing activities defined in Business and Professions Code section 25100, indoor grow operations, or other industrial wastewater to an onsite wastewater treatment system (e.g. septic tank and associated disposal facilities), to surface water, or to land.*

28. These Terms were adopted with the 2017 Cannabis Policy and unmodified by the 2019 amendments.

Water Quality Enforcement Policy

29. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy), which became effective following OAL approval on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability that considers the factors identified in Water Code section 13327.

California Environmental Quality Act

30. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Control Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

ALLEGED VIOLATION

31. The Prosecution Team alleges that between approximately June 5 and June 25, 2019, the Discharger violated Conditional Waiver conditions by discharging approximately 8,400 gallons of wastewater from the reverse osmosis filtration system to the onsite wastewater treatment system, from which the wastewater reached waters of the State, specifically groundwater in the Homer Hydrologic Unit. This is a violation of the Conditional Waiver because such

discharge is prohibited under Chapter 3, IV.D of the Basin Plan and Cannabis Policy Attachment A Terms 12, 26 and 27.

PROPOSED ADMINISTRATIVE LIABILITY AMOUNT

32. The Prosecution Team proposes an administrative civil liability amount of \$50,385.44 for the violation, as detailed in Attachment A to this Complaint. The proposed administrative civil liability is calculated on a per day basis, as authorized under Water Code section 13350, and takes into account the factors cited in Water Code section 13327.

MAXIMUM LIABILITY

33. The maximum liability under Water Code section 13350 is \$5,000 per day of violation. The Prosecution Team alleges 21 days of violation. Therefore, the statutory maximum liability amount is \$105,000.00.

MINIMUM LIABILITY

34. The Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for the alleged violation is approximately \$3,005.00. Therefore, the minimum liability that may be imposed in accordance with the Enforcement Policy is \$3,305.50.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

35. The Assistant Executive Officer of the Colorado River Basin Regional Water Board proposes an administrative civil liability amount of \$50,385.44.
36. A hearing on this matter will be conducted by the Regional Water Board on September 3, 2020, unless the Discharger selects one of the options in the Hearing Waiver Form and submits the completed form to the Regional Water Board by the deadline identified in the Hearing Procedure.
37. If this matter proceeds to a hearing, it will be governed by the attached Proposed Hearing Procedure. During the hearing, the Regional Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability amount. The Assistant Executive Officer, or designated lead prosecutor, reserves the right to amend the proposed amount of civil liability to conform to the evidence presented.

38. Notwithstanding issuance of this complaint, the Regional Water Board retains authority to assess additional penalties for violations of the Discharger's Conditional Waiver for which penalties have not yet been assessed or for violations that may subsequently occur.

Original Signed by Cassandra Owens

6/5/2020

Cassandra Owens

Date

Assistant Executive Officer

Colorado River Basin Regional Water Quality Control Board

Attachments: Attachment A - Administrative Civil Liability Penalty Methodology